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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,452	04/12/2001	Randall Allen Vogel	AD6728 US NA	3330

23906 7590 09/22/2005

E I DU PONT DE NEMOURS AND COMPANY  
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BARLEY MILL PLAZA 25/1128  
4417 LANCASTER PIKE  
WILMINGTON, DE 19805

EXAMINER

JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/833,452	<b>Applicant(s)</b> VOGEL ET AL.	
	<b>Examiner</b> Monique R. Jackson	<b>Art Unit</b> 1773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6,7,9,11,12,14,16-18,20,21,43,45,47,49,54-81,83 and 84 is/are pending in the application.
- 4a) Of the above claim(s) 4,7,9,11,12,14,16-18,20,21,45,47,49 and 81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,43,54-80,83 and 84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*b*

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/9/05 has been entered.
2. Claims 1, 3, 4, 6, 7, 9, 11, 12, 14, 16-18, 20-21, 43, 45, 47, 49, 54-81 and 83-84 are pending in the application. Claims 4, 7, 9, 11, 12, 14, 16-18, 20-21, 45, 47, 49 and 81 are withdrawn from consideration as being directed to non-elected species.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

4. Claims 1, 3, 6, 43, 54-80 and 83-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Amended claim 1 recites the limitation "a second co-extruded layer consisting of a polymer selected from the group" wherein the transitional phrase "consisting of" is a closed transitional phrase excluding the incorporation of any components other than the components following the term, i.e. a polymer. Hence, it is unclear how the "second co-extruded layer consisting of a polymer" can further comprise pigments, dyes, flakes or combinations thereof as recited at the end of Claim 1 and in Claim 6.

***Claim Rejections - 35 USC § 102***

5. Claims 1, 3, 6, 43, 56-57, 60-61, 64, 66-67, 73-74, 77 and 83-84 are rejected under 35 U.S.C. 102(b) as being anticipated by Fanselow et al for the reasons recited previously and restated below.

Fanselow et al teach a coextruded multilayered film comprising a core layer of soft thermoplastic polymer such as ethylene copolymers including blends with ionomers (*reads upon the first coextruded layer*), sandwiched between outer and inside surface layers wherein in preferred embodiments the inside surface layer is an ionomeric copolymer with a copolymer of ethylene and methacrylic acid-metal cation salt being particularly suitable (*reads upon the 2<sup>nd</sup> coextruded layer consisting of ionomer*), and wherein in particularly preferred embodiments the core layer is composed of ethylene-vinyl acetate, ethylene-butene copolymer, ethylene methacrylate copolymer, ionomer and combinations thereof (Abstract; Col. 4, lines 23-50; Col. 5, lines 1-3; Col. 11, lines 7-15.) Fanselow et al teach that the film may be clear, opaque or colored and that any one or all of the layers may be provided with pigments or dyes as desired (Col. 6, lines 34-37 and Col. 13, lines 12-15.) Fanselow et al specifically teach an example comprising a trilayer coextruded film comprising a surface layer of a SURLYN ionomeric resin coextruded with a core layer comprising a SURYLN/EMAC resin blend and an outer surface layer of EMAC (Example 18.) Fanselow et al teach that the film may be laminated to itself or a second like film to produce a film based assembly that may then be bonded to connective or other performing parts (Col. 13, line 60-Col. 14, line 23.) Fanselow et al further teach that the coextruded film and layers have thickness ranges that read upon the instantly claimed ranges and considering the multilayer films are produced by coextrusion to form a unitary film, the

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Examiner takes the position that “the flow properties” of the layers are inherently “matched” as instantly claimed (Col. 11, line 60-Col. 12, line 16.)

6. Claims 1, 3, 43, 56, 60, 64, 66, 73, 77 and 83-84 are rejected under 35 U.S.C. 102(e) as being anticipated by Mientus et al for the reasons recited previously and restated below. .

Mientus et al teach a coextruded, multilayered film comprising a thermoplastic core layer having a first side and a second side, the core layer (*equivalent to the 1<sup>st</sup> coextruded layer*) comprising: a polyolefin having a density in the range of about 0.89 to about 0.97 grams per cubic centimeter; a second polymeric material selected from ionomers derived from sodium, lithium or zinc and an ethylene/methacrylic acid copolymer, and a combination thereof, and a light stabilizer, and is clear or pigmented; an abrasion and scuff resistant clear first thermoplastic skin layer overlying the first side of the core layer, and a clear second thermoplastic skin layer overlying the second side of the core layer, wherein the skin layers (*read upon the instantly claimed 2<sup>nd</sup> coextruded layer*) are preferably ethylene/methacrylic acid copolymers; ethylene/acrylic acid copolymers; ethylene/methacrylic acid copolymers containing sodium, lithium or zinc (also referred to as ionomers); and mixtures of two or more thereof; and wherein the multilayered film may be laminated to a substrate such as a release liner or adhered to a car, truck, boat or the like (*reads upon the instantly claimed substrates*; Abstract; Col. 3, lines 22-62; Col. 5, lines 22-33; Col. 6, lines 6-46; Col. 7, lines 32-48; Col. 12, lines 19-29; Col. 37, lines 1-5.) Mientus et al teach specific examples comprising SURYLN skin layers (*reads upon the 2<sup>nd</sup> coextruded layer*) sandwiching a core layer comprising a blend with SURLYN resin (*reads upon the instant first coextruded layer*) (Examples.) Mientus et al further teach that the coextruded film and layers have thickness ranges that read upon the instantly claimed ranges and considering

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the multilayer films are produced by coextrusion to form a unitary film, the Examiner takes the position that "the flow properties" of the layers are inherently "matched" as instantly claimed (Col. 13, lines 1-29.)

*Response to Arguments*

7. Applicant's arguments filed 8/9/05 have been fully considered but they are not persuasive considering the core layers taught by the prior art comprising the ionomer blends can read upon the claimed first layer while the layers consisting of ionomer read upon the claimed second layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Monique R. Jackson  
Primary Examiner  
Technology Center 1700  
September 19, 2005